may consist of corporation officers or majority stockholders. Thus in a recent case one corporation, to prevent competition, secured control of another and so managed it as to render its stock worthless. A direct action by a stockholder of the latter corporation against the controlling corporation was held demurrable. *Ames* v. *American Telephone & Telegraph Co.*, 166 Fed. 820 (Circ. Ct., D. Mass.).

INJUNCTIONS AGAINST PRIVATE NUISANCES. — Against a continuing nuisance by a private individual or corporation equity will grant an injunction in favor of an innocent plaintiff who would otherwise suffer irreparable injury. As additional reasons for equity jurisdiction, desire to prevent multiplicity of suits and recognition of the inadequacy of the plaintiff's remedy at law are commonly mentioned.[1] Neither, however, is important; for equity will enjoin the commission of a single tort as readily as a nuisance where irreparable injury is threatened; [2] and as for the inadequacy of the remedy at law, that is obviously an element of the nature of the threatened injury. Irreparable injury in this connection may be defined as injury which is not only continuous but cumulative in effect, assuring in due time either such damage to the plaintiff as to personally disable him from the beneficial use of his property, or the destruction of that beneficial use itself.[3] On the other hand, injury not irreparable, occasioned by a private nuisance, is not cumulative: its effect is to cause and maintain a definite deterioration in the beneficial use of the plaintiff's property, which may be felt either continuously or periodically in the same degree. Where injury of the latter class is threatened, it is said that equity will assume jurisdiction on the joint ground that the plaintiff's remedy at law is inadequate, and that he will otherwise be driven to a multiplicity of suits at law.[4] But the very need of this multiplicity for redress at law amounts in itself to inadequacy. Equity jurisdiction should not depend on whether or not damages as computed by a jury can accurately enough measure the plaintiff's injury: in each such action he will obtain the only kind of redress possible either at law or in equity for a *past* wrong of this nature. The true ground is not that the law is inadequate [5] within its sphere, but that, since the law can deal with the situation only as it breaks off into a sequence of separate torts, it is better that equity should grant single relief by dealing with it while there is still, so to speak, a single issue.

Where the plaintiff is entirely innocent,[6] may equity ever justifiably refuse to take jurisdiction in this class of cases as in trespass? For as equity takes

---

& Sons Co., 83 Fed. 17. It must be recognized that cases may arise involving both rights; so that either form of action is appropriate. Ritchie *v.* McMullen, 79 Fed. 522.

[1] American Smelting & Refining Co. *v.* Godfrey, 158 Fed. 225.

[2] Echelkamp *v.* Schrader, 45 Mo. 505.

[3] Sullivan *v.* Jones & Laughlin Steel Co., 208 Pa. 540.

[4] 2 Story, Eq. Jur., 13 ed., § 925.

[5] A distinction should be taken between difficulty of computing damages due to the nature of the injury and the character of the tribunal, and the impossibility of recovering the damages assessed because of the defendant's insolvency, which is in itself often considered a ground for equitable jurisdiction. Reyburn *v.* Sawyer, 135 N. C. 328, 340.

[6] If the plaintiff, actively or by acquiescence, encouraged the defendant to make expenditures, equity will not hesitate to decline jurisdiction. See Stock *v.* City of Hillsdale, 119 N. W. 435 (acquiescence).

jurisdiction of the so-called equitable tort of waste on the theory that the law ought to have allowed a remedy therefor,[7] so, conversely, where the defendant threatens repeated trespass which would cause a purely technical or nominal injury to the plaintiff equity will refuse an injunction on the theory that the law should not have granted a remedy in the first instance.[8] But the very definition of nuisance postulates an injury which shall be substantial.[9] Therefore it would seem that equity cannot rightfully refuse to exercise concurrent jurisdiction. Upon this question, however, the cases are in conflict. The weight of English authority and some of the courts in this country insist that the injunction must issue as a matter of right.[10] Others, representing the modern trend, agree with a recent decision in refusing an injunction where the injury to the defendant by its issue would greatly outweigh the injury to the plaintiff by its refusal. *Bliss* v. *Anaconda Copper Mining Co.*, 167 Fed. 342 (Circ. Ct., D. Mont.). Doubtless otherwise the plaintiff may be enabled to charge an exorbitant price for his property. That, however, is one of the legitimate incidents of ownership;[11] but the same cannot be said for the private right of eminent domain which the defendant would in effect acquire upon a denial of the injunction.[12]

Although this doctrine of the "balance of convenience" is not to be justified upon strict principle, its persistence in this country and not in England may possibly be explained by the fact that the American courts, unlike the English, are not only denied the reassuring thought that the legislature is at liberty to take a higher view of the relative rights of the parties and condemn private property for private use,[13] but are also, as a general thing, refused statutory authorization to give damages in lieu of an injunction.[14]

THE RUNNING OF THE BURDENS OF COVENANTS AT LAW AND IN EQUITY. — In England the burden of covenants runs with the land at law only in the case of leases.[1] In this country a broader view has been taken, and it is generally held that the burden will always run at law, provided,

---

[7] See Short *v.* Piper, 4 Harr. (Del.) 181.

[8] See Behrens *v.* Richards, [1905] 2 Ch. 614. Of course, if the law allowed no action for such trespass, no prescriptive right could be acquired. As it is, the plaintiff need only bring action often enough to defeat the presumption of a lost grant; and this, apparently, was not considered hardship enough, in the case cited, to compel equitable relief.

[9] St. Helen's Smelting Co. *v.* Tipping, 11 H. L. C. 642.

[10] Hennessy *v.* Cormony, 50 N. J. E. 616.

[11] Cowper *v.* Laidler, [1903], 2 Ch. 337.

[12] Where the defendant is a public service corporation, the argument for granting the injunction is even stronger, for such corporations are allowed a statutory method of condemning private property. Village of Dwight *v.* Hayes, 150 Ill. 273.

[13] *Cf.* Goodson *v.* Richardson, L. R. 9 Ch. App. 221.

[14] But the English courts of equity will not avail themselves of this privilege, where irreparable damage is threatened. Swaine *v.* Great Northern Ry. Co., 4 DeG., J. & S. 211. Without such statutory authorization the New York courts have assumed a like power by granting an alternative decree. Sperb *v.* Metropolitan Elevated R. Co., 137 N. Y. 155. Such a course would be anomalous in the case of a private corporation; but when applied, as is done, exclusively in cases of public service corporations, the result is fantastic.

[1] Haywood *v.* Building Soc., 8 Q. B. D. 403; Austerberry *v.* Oldham, 29 Ch. D. 750.